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Public Sector Dispute Resolution in Local Governments: Lessons from the SCAG Project

Alana Knaster*
Gregory L. Ogden**
Peter Robinson***

INTRODUCTION

This article seeks to share lessons from an ongoing six-year project¹ to overcome the barriers to the use of facilitation and mediation (ADR) processes for addressing regional and interjurisdictional planning disputes throughout Southern California. The participants in this effort originally assumed that the successful use of mediation in high profile disputes would lead to greater acceptance of ADR processes by governmental officials. After several failed attempts, project leaders concluded that it would be appropriate to refocus the original methodology and strategy for promoting the use of ADR. The new strategy focuses on the establishment of mediation services for community-based disputes referred to city government. Despite the participation of experienced experts in the field of public policy mediation and an extensive expenditure of time and resources, the anticipated results have not been achieved to date. Nevertheless, participants have learned important lessons regarding approaches that are more effective in increasing city officials' reliance on ADR processes.

Voltaire's classic, *Candide*, describes a worldwide quest for adventure and meaning, but concludes with the main character's realization that "distant

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1. The research and support for this project was provided by a grant of \$125,000 from the John Randolph Haynes and Dora Haynes Foundation. *See infra* notes 20-21 and accompanying text, for more information about the foundation grant. Needless to say, the opinions and conclusions of the authors' of this article are theirs alone, and are not those of the Haynes Foundation.

Pepperdine Dispute Resolution Law Journal, Vol. 1, Iss. 2 [2001], Art. 2 adventures are good, but we must each tend to our own garden.”² In the same spirit, it is our hope that the story of this project may help other adventurers scale down their grandiose dreams to more manageable (and local) endeavors.

The first part of this article describes the evolution of the strategies and activities of the project proponents.³ The second part of the article shares the results of a comprehensive study of the project’s impact after five years.⁴ The third part suggests lessons extracted from the experience and suggestions for others embarking on similar projects.⁵

I. THE BEGINNING OF THE SCAG PROJECT

A. *Need for the Project*

In early 1995 the senior staff at the Southern California Association of Governments (SCAG)⁶ expressed interest in encouraging the use of facilitated collaborative processes for inter-jurisdictional disputes likely to arise from “bottom-up regional planning” as well as to resolve disputes arising in the normal course of affairs. SCAG is the multi-purpose regional planning agency for six counties⁷ encompassing 184 cities in the Southern California region.⁸ It is statutorily responsible for monitoring and assuring regional compliance with state and federally mandated standards in areas such as air quality, transportation, and affordable housing.⁹ As the entity responsible for coordinating the regional planning activities of nearly 200 autonomous public entities in one of the nation’s most densely populated regions, SCAG is the functional hub, regularly addressing a variety of conflicts.

2. Voltaire, *Candide*. See *Candide and Other Stories*, trans. Roger Pearson (Oxford Univ. Press, 1990).

3. See *infra* text accompanying notes 6-31. OR See discussion *infra* Parts I-III.

4. See *infra* text accompanying notes 32-34. OR See discussion *infra* Parts IV-VI.

5. See discussion *infra* Part VII.

6. SCAG is “a regional planning agency and a Council of Governments comprised of 184 cities in six counties.” *Planning the Southern California Region through the 21st Century*, at <http://www.scag.ca.gov> (last visited Sept. 21, 2000).

7. Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura.

8. The region includes an area of 38,000 square miles and almost 16 million people. See *A Description of the Association*, at <http://www.scag.ca.gov/about/whatdo.htm> (last visited Sept. 21, 2000).

9. SCAG functions as the Metropolitan Planning Organization (MPO) for six counties in California. MPO’s are federally mandated. 23 U.S.C. § 134 (2000). See also 23 U.S.C. § 101 et seq, the Code of Federal Regulations (23 C.F.R. § 450.212 (C) (2000)), and the California Code of Regulations that establish the boundaries of SCAG. See 14 C.C.R. § 17031, 17032 (2000).

To advance the use of collaborative and consensus processes in the region, SCAG leadership formed a partnership with a team of experienced dispute resolution practitioners and educators to design, implement, and evaluate several dispute resolution system components for SCAG and its members. SCAG knew that the catalyst for this initiative should come from outside experts because SCAG frequently is or is perceived by its members to be a party to many of the region's disputes. Because external neutrality and credibility are considered crucial, SCAG could not easily serve as a neutral entity because it had a stake or a role in many of the decisions. The circumstances and constraints of the consulting team members and organizations provided interpretive context for the project. Because the potential for this project was so enormous, it relied on the combined efforts of representatives from four additional organizations. These four organizations were, respectively: the Western Justice Center Foundation (WJC), The Los Angeles County Bar Association's Dispute Resolution Services (DRS), The Straus Institute for Dispute Resolution at Pepperdine University School of Law (SIDR), and The Mediation Institute (TMI).

B. Project Participants

The Western Justice Center Foundation in Pasadena¹⁰ was selected as the lead administrative agency for the project. While the WJC did not have any staff at that time, its impeccable reputation and the considerable influence of its board members would aid in fundraising for the project and provide the project with the prestige and the broad based credibility necessary for acceptance by many of the region's elected officials and municipal staff.¹¹

The Los Angeles County Bar's Dispute Resolution Services,¹² the second

10. The Western Justice Center is a Pasadena, California based foundation that "collaborates with other organizations to develop innovative models of conflict resolution. The Center relies on a small, core staff who convene cooperative efforts to create, evaluate and replicate new ways to resolve conflicts and to improve the quality of justice in the regional, national and international spheres." Western Justice Center Homepage, at <http://www.wjcf.org> (last visited May 2, 2000).

11. E.g., Leonard Janofsky, former President of the American Bar Association, and prominent Los Angeles area lawyer, was a founding board member of the WJC. *See id.* at News, <http://www.wjcf.org/pr20.htm> (last visited May 2, 2000).

12. Dispute Resolution Services "is a non-profit corporation of the Los Angeles County Bar Association committed to promote and provide accessible and effective conflict resolution services." *See* Dispute Resolution Services, Inc. Homepage, at <http://www.lacba.org/community/>

Pepperdine Dispute Resolution Law Journal, Vol. 1, Iss. 2 [2001], Art. 2 agency participating in the project, is the descendant of the Santa Monica Neighborhood Justice Center funded as a pilot project by the U.S. Department of Justice in 1978. DRS “serves more than 25,000 people annually through the following six programs: community services, court services, attorney-client services, business and consumer services, youth services, and training and consultant services.”¹³ By 1995 it had numerous community dispute resolution offices supported by many volunteer mediators throughout Los Angeles County. It had excellent relationships with a number of local cities and some experience resolving disputes involving local municipalities. The Executive Director was personally committed to and involved in the project.

The third organization supporting the project was the Straus Institute for Dispute Resolution¹⁴ at Pepperdine University School of Law.¹⁵ SIDR enjoys an outstanding reputation for quality dispute resolution education programs among the Southern California legal and judicial communities. The University’s resources and excellent reputation lent credibility that could encourage elected officials to participate and to the positive evaluation of the impact of the project.¹⁶

The final organization involved was The Mediation Institute (TMI). TMI is a non-profit dispute resolution agency that has specialized in mediating public policy disputes for over 25 years.¹⁷ Its president has, by far, the most expertise and extensive track record of the team members in mediating disputes involving local governments. TMI’s President had previously worked closely with DRS and SIDR and was enthusiastically supported as the leader, coordinator of activities, and primary point of contact for the project team.¹⁸

drs.html, (visited May 2, 2000).

13. *See id.*

14. The Straus Institute for Dispute Resolution was established at the Pepperdine University School of Law to meet the demands of the changing legal environment of dispute resolution. Emphasizing non-litigation approaches to conflict such as negotiations, mediation and arbitration, the Institute is involved in research, publication, consultation, teaching, training, and intervention related to dispute resolution. The Institute is the first program of its kind in the Southwest and the most comprehensive law school related program in the nation. Established in 1986, the Institute provides services throughout the United States and internationally. The Institute is housed in the Odell McConnell Law Center of Pepperdine University School of Law. *The Straus Institute for Dispute Resolution Homepage*, at <http://law.pepperdine.edu/straus/> (last visited May 2, 2000).

15. *See* Pepperdine University School of Law at <http://law.pepperdine.edu> (last visited Sept. 19, 2000).

16. *See* Pepperdine University, at <http://www.pepperdine.edu> (last visited September 19, 2000).

17. The Mediation Institute is located at 22231 Mulholland Highway, # 213, Calabasas, CA 91302. *See* The Mediation Institute, at <http://www.mediainst.org> (last visited Sept. 10, 2000).

18. The president of TMI is Alana Knaster. *See The Mediation Institute Staff*, at www.mediainst.org/tmistaff.html (last visited July 17, 2000).

SCAG's Legal Counsel agreed to be the SCAG liaison and advisor to the project team. Her natural tendency toward consensus building and considerable knowledge about disputes and personalities throughout the region and internal SCAG organizational intricacies enabled her to be of immense help.¹⁹

C. *Project Challenges*

The challenges of initiating this project were apparent from the beginning. The absence of start-up funds and/or designated staff resulted in consortium members donating their time to write the project proposal seeking foundation funding. At the time, the stated goal of the project was articulated as follows: "The objective of the SCAG-ADR Project is to break the gridlock in regional planning and decision making in Southern California by designing and integrating a customized dispute resolution system into the planning and monitoring processes of SCAG and its members."²⁰

Conflicts of interest surfaced between the project and various members on the project team when individual organizations requested the project not to solicit certain foundations, which were considering proposals for other projects submitted by one or another of the organizational project team members. In the end, the WJC and SCAG relied on their reputations and network of contacts to secure partial funding from a foundation.²¹ The foundation made funding available to design customized ADR systems for SCAG.²²

The project team concluded that it should proceed on the first phase of work and seek additional funding from all sources for implementation and evaluation after having established a successful track record in the Systems Design stage.

19. See *Legal Department*, at <http://www.scag.ca.government/depts/scep/legal.htm> (last visited Sept. 21, 2000).

20. The Public Sector Dispute Resolution Consortium, at <http://www.scag.ca.gov/adr/index.htm> (last visited Sept. 21, 2000).

21. The John Randolph Haynes and Dora Haynes foundation in Los Angeles funds social science research. See *The John Randolph Haynes Foundation*, at <http://www.haynesfoundation.org> (last visited Sept. 21, 2000).

22. The foundation grant was to the "Western Justice Center Foundation, \$125,000 for a two-year study, Evaluation of the Implementation of the Southern California Association of Government's (SCAG) Alternative Dispute Resolution (ADR) System, Alana Knaster, Project Director." See *Grants for Research and Archival Projects*, at <http://www.haynesfoundation.org/grants.html> (last visited Sept. 21, 2000).

II. THE SYSTEMS DESIGN STAGE

The methodology and results of the Systems Design Stage are well presented in the Executive Summary of the report to the foundation who funded this work. The following section of the article²³ is quoted almost verbatim from that document.²⁴

A. *Design Project Methodology*

The Project Team was directed to develop two sets of dispute resolution systems. The first set of models addresses SCAG mandates and authorities. The second is designed to provide a resource to members for inter-jurisdictional disputes that do not directly involve SCAG or its programs or for land use and California Environmental Quality Act (CEQA)²⁵ litigation in accordance with California's SB 517 (Bergeson) The Land Use and Environmental Dispute Mediation Act (1994).²⁶ To develop the systems, the Project Team reviewed studies and documents pertaining to the informal and formal usage of conflict resolution approaches at the national, state, and local levels. The models build upon that experience and are consistent with the many statutes governing regional planning and the role and responsibilities of the sub-regional Council of Governments (COG).²⁷

As a primary thrust of the Project, the Team interviewed approximately fifty (50) elected officials, agency staff and regional stakeholder groups to identify their needs and obtain their recommendations on what system designs might have broad application and support. The team worked with both a Regional Staff Advisory Committee and Elected Official Advisory Committee to review the survey instrument, draft models and team assumptions at each critical juncture.

B. *Directions Suggested by Project Interviews*

The input provided by elected officials, subregional COG and commission staff and public interest group leaders was invaluable in setting the direction for the development of the ADR models. Several important themes

23. The sections entitled "A. Design Project Methodology through H. System 4 Mediation of Land Use and CEQA litigation."

24. Executive Summary, *Id.*

25. See CEQA Statute and brief definition, at <http://ceres.ca.government.ceqa> (last visited October 1, 2000).

26. Executive Summary, *Id.*

27. Executive Summary, *Id.*

emerged during the course of the consultation with the Advisory Committees and the interview process. The following themes were identified and integrated into each of the systems as appropriate.

First, implementation of the systems should begin at the subregional level. SCAG should provide resources (financial support, technical expertise, and access to qualified neutrals) to support the subregional efforts and the use of ADR by members. Second, the type of process that has the greatest appeal is one that requires disputants to come to the table to assess whether an ADR process is appropriate for them.

Disputants should be expected to at least have the courtesy to attend a "meet and confer" session to consider future steps. The provision of dispute resolution services needs to be administered by a credible neutral organization. The process proposed should provide a more expeditious route for resolving differences than is afforded by the multi-layered, lengthy planning process that it is supposed to supplement. Otherwise the term "alternative" is a misnomer. It should also be readily accessible and understandable to potential users. A concerted effort to identify and meaningfully involve non-governmental participants in consensus-building on regional issues is necessary.

If SCAG is to be a leader in promoting ADR, then it has to practice what it preaches. It was generally acknowledged that there was a lack of direct experience with formal consensus-building and alternative dispute resolution processes in the region, although a number of elected officials and staff indicated that they frequently play the role of facilitator/mediator within their jurisdiction.

C. Potential Dispute Areas

Virtually every issue that comes under the purview of SCAG can be resolved in the ADR arena. Areas of dispute that have been particularly thorny in recent years and which regional leaders believe could benefit from ADR include a broad range of transportation planning issues, employment to housing balance projections, affordable housing allocations and competition with neighboring communities for tax dollars. These issues will likely remain critical dispute arenas for the foreseeable future. Notable, longstanding disputes such as the 710 Freeway Extension controversy or the creation of High Occupation Vehicle (HOV) lanes on Interstate 5 were repeatedly cited as conflicts that could have been prevented if an ADR approach been utilized at an early

stage. Border disputes over project siting, although described as “single event” disputes, are viewed by many regional leaders as a ripe area for the introduction of early consultation and ADR.

D. Proposed Systems for the Region

Based upon the literature search, regional interviews, and professional experience of the Project team, four systems were proposed for adoption by the SCAG governing board, which is composed of 71 elected officials from various municipalities throughout the region known as the Regional Council.²⁸

1. System 1 ADR for SCAG Mandates and Authorities

This system established formal procedures for initiating and conducting dispute resolution proceedings for matters in which SCAG has a statutory role in resolving disputes among members and for conflicts between SCAG and a local government agency over a regional planning or implementation issue. Early identification and resolution of potential disputes at the subregional level is encouraged prior to initiation of a formal proceeding. A courtesy “meet and confer” step is proposed to bring disputants to the table to determine whether they are willing to participate in an ADR process. If all of the key parties are agreeable, then a formal proceeding is initiated. SCAG is required to participate in any consensual process if requested by all of the key interests. An independent panel of professionals or trained elected officials provides neutral third party services. Possible issues that might be addressed under this system include the resolution of inconsistencies between two subregional plans or a difference of opinion between a jurisdiction and SCAG over population and job projections.

2. System 2 Policy and Regulatory Consensus-Building

System 2 promotes the use of a highly interactive, multi-interest group negotiations and consensus-building process on critical issues in the region. A neutral professional is assigned to identify what interests need to be represented in the process and to establish their willingness to participate in a consensus process. Several meetings are conducted over a period of several months to a year and result in a consensus policy or a regulation.

28. *Regional Council Members*, at <http://www.scag.ca.gov/about/mission.htm> (last visited Sept. 21, 2000).

Issues that might lend themselves to this process include a one-stop permit process, such as the one already developed at SCAG on permits for film production. The formation of the Salton Sea Joint Powers Agreement (JPA) is an example of a policy dialogue directed at setting policies to remedy a long-standing environmental problem. At the federal level, regulatory negotiations have been conducted on issues ranging from standards for handicap access to airplanes to the formula for reformulated and oxygenated gasoline for non-attainment areas.

3. System 3 Protocol for Interjurisdictional Disputes

The protocol described in System 3 provides referral mechanisms and technical resources for resolving disputes between members in which SCAG does not play a role. Local jurisdictions are encouraged to confer in the formative stages of a conflict with assistance from subregional organizations serving as the neutral facilitator or mediator. If efforts by city staff, elected officials from within the jurisdiction, or trained subregional officials are not sufficient to work through problems, then SCAG would encourage the use of a roster of neutral trained professionals or elected officials to assist disputing jurisdictions. A typical inter-jurisdictional dispute might include such issues as the location of a regional shopping center, the further commercialization of a regional park, or the provision of services to the homeless.

4. System 4 Mediation of Land Use and CEQA Litigation

SCAG and the subregional COGs are referenced in California's SB 517 (The Land Use and Environmental Dispute Mediation Act) as a regional source providing a roster of qualified neutral mediators to the courts for land use and CEQA litigation.²⁹ System 4 provides a recommended set of steps for accessing such a roster. SCAG would not provide neutrals directly, but would help ensure that the neutrals recommended to members or to citizens in the region have adequate and appropriate qualifications and experience. SCAG would also play a role in encouraging members and citizens in the region to elect mediation to settle their litigation on land use and environmental matters.

A chart summarizing the design of the four systems is part of the re-

29. Cal. Govt. Code § 66031 (c) (1), (2) (West 2000).

Pepperdine Dispute Resolution Law Journal, Vol. 1, Iss. 2 [2001], Art. 2 port.³⁰ The report and proposed dispute resolution systems were enthusiastically endorsed and unanimously approved by SCAG's 71 member Regional Council.

III. PROJECT IMPLEMENTATION

The enthusiastic reception of the system design phase of the project propelled SCAG and the project members toward implementation. SCAG appointed an ongoing advisory committee of elected officials to provide guidance and oversight for implementation of the project. SCAG appointed its legal counsel as the ADR coordinator within SCAG. The WJC, still without staff, agreed to start developing and managing a roster of qualified dispute resolution neutrals to provide services to SCAG and its members.

At this time, the implementation strategy recognized that municipal elected officials and staff in the region lacked direct experience with formal consensus-building and alternative dispute resolution processes. To effect institutional change, the implementation phase would require extensive promotion and education throughout the expansive region. Since some elected officials preferred that other elected officials not impacted by a given dispute be available as neutral mediators and facilitators, the project team intended to conduct extensive recruitment and training activities. To do so, it would be critical to obtain the support of subregional COG officials. The project team intended to break down any resistance and barriers to the collaborative approaches by demonstrating their effectiveness in a series of highly visible pilot project disputes in each of the systems.

Meanwhile, SCAG, the WJC, DRS, SIDR, and TMI resolved to renew their collaborative efforts to secure funding for the implementation stage. The project team believed that this effort would become self supporting through payment of fees by clients once there was the creation of a qualified panel at a credible institution, demonstrated success in a series of high profile cases, and extensive promotion and educational activities. Since funding had only been acquired for the systems design phase, the project would have to rely on the donated resources of the team members for all efforts to plan and begin the implementation phase and to seek funding. The team prepared and circulated foundation proposals soliciting funding for both implementation and evaluation of the project. At the same time, SCAG's advisory committee, expecting the project to move forward, met regularly with the project team members. A number of implementation objectives were accomplished while seeking funds for the implementation phase.

30. The chart is contained in Appendix Two at the end of the article.

The project team members and advisory committee agreed upon a process to apply for WJC-SCAG Neutral Roster membership and the criteria to evaluate applications. Applications were solicited from the dispute resolution community and out of many applicants, a smaller group of highly qualified members were accepted to be listed on the WJC-SCAG Neutral Roster.

One day, training programs were presented to two groups of about 15 elected officials. Brochures promoting three-day public policy dispute resolution training programs presented by the TMI president for SIDR were mailed annually to more than 1000 elected officials and SCAG and municipal staff members. Approximately 30 people associated with SCAG attended over a five-year period. Promotional presentations of less than 30 minutes were presented at about five SCAG Regional and Sub Regional gatherings.

After a year of working to implement the project without having secured funding, signs of wear and tear among the team members began to surface. Each of the organizations on the team balanced a variety of other programs and demands with the project. DRS participation entirely ceased. SIDR's participation was relegated to student SIDR Fellows and externs; staff involvement shifted from a regular commitment to an "as needed" basis. The weight of the program fell on the shoulders of the SCAG legal counsel and TMI president.

Although operating in the absence of funding and decreasing volunteer resources, the project continued to make progress. The SCAG legal counsel was regularly contacted directly or indirectly about conflicts between SCAG members (System Three Disputes). She would refer the matter to TMI's President who was the de facto volunteer WJC Roster Manager. TMI's President was in an awkward position because she was both the de facto WJC Roster manager and one of the most experienced and qualified people on the roster. TMI's president recognized the problems with this system and sought other arrangements, but WJC was without staff and no one else made themselves available as the volunteer WJC Roster manager. While multiple resumes of roster members were regularly distributed, TMI's President was retained by many of the parties requesting service.

A good description of the Pilot Case Studies undertaken by the project was presented in a report to the foundation who eventually funded the evaluation phase. The following section is borrowed heavily from that report.

IV. PILOT PROJECTS AND DISPUTE RESOLUTION

The Consortium provided consultation, facilitation and mediation services to a broad spectrum of municipal clients during the Project time frame. These services were provided either by Project personnel or through referrals from the Project dispute resolution professional roster. Project staff estimate that approximately fifty inquiries regarding provision of ADR services were handled during the Implementation Phase. Services included conducting telephone interviews to ascertain the needs of the disputants, meeting with parties to assist them in evaluating whether ADR was appropriate for their situation, conducting one or two meetings of the disputants to help them get over a hurdle in their deliberations, providing materials on process design and dispute resolution techniques and conducting in-house training sessions on how to evaluate ADR options. Since a number of the inquiries regarding ADR services were confidential, they are not discussed in this article.

One of the primary functions of SCAG'S ADR Advisory Committee was to identify high profile disputes in the region that might be appropriate as Project case studies. This was in keeping with the assumption that providing mediation services to several well-known disputes in Southern California would heighten awareness of the use of mediation as a decision-making tool. This in turn would ultimately lead to increased utilization of mediation and consensus building processes by SCAG members. Advisory Committee members also agreed to play a role in making the necessary introductions of dispute resolution professionals involved in pilot cases. The Advisory Committee selected neutral conveners for the disputes it recommended as pilots. The convener was charged with interviewing each of the key stakeholders connected with the dispute to ascertain the appropriateness of a dispute resolution proceeding and providing recommendations on participants, process design and issues to be negotiated.

The initial list of disputes identified by the Advisory Committee included the Burbank Airport expansion, the El Toro Marine Base conversion, the Interstate 710 extension, and the Alameda Corridor. These were longstanding litigated disputes involving numerous jurisdictions and diverse interests. Most importantly, because these facilities were important for accommodating regional transportation and commercial needs, the outcome of each dispute would affect more than the participants that might be considered direct stakeholders.

Since not all on the initial list of disputes proved viable as candidate pilot projects, the Advisory Committee subsequently suggested other projects based upon requests for services from members during the course of the Pro-

ject. Below is a brief description of the pilot cases and service programs for which the ADR Consortium Project provided ADR services.

A. Burbank Airport Expansion (A System Three Dispute)

The Burbank Airport expansion dispute interested SCAG leaders because the results would have an impact on the current and future regional transportation needs. Although the dispute centered on impacts to adjacent communities, the dispute would impact the entire region. Burbank Airport is important to commerce in the sub-region. It also provides an alternative to Los Angeles International Airport (LAX) for recreation and business travelers. Throughout Southern California, opposition to new airport facilities and the expansion of existing facilities is a significant issue. The Advisory Committee recognized that if the mediation process succeeded at Burbank Airport, it could be recognized and used in a number of other pending disputes.

Several informal contacts were made to leaders involved in the dispute, opening the door for consideration of mediation. Project staff met with officials from the affected jurisdictions to discuss how mediation could be utilized, including basic information on how to select a mediator, ground rules, and other procedural matters. Project materials were distributed to elected officials considering mediation as an option. The ADR roster was provided as one source of potential professionals to be considered by disputants. SCAG's ADR coordinator and the SIDR representative for the project served as conveners and assisted the parties in selecting a mediation team consisting of one nationally prominent mediator from another state and one southern California mediator.

The parties in the Burbank Airport dispute were not able to resolve the issue through mediation. After this first effort failed, the parties attempted to bring in another mediator and have since met with the Administrator of the FAA acting informally as a mediator. There have also been several further rounds of litigation.

Because the dispute is ongoing and the parties have not waived confidentiality, this text cannot discuss the mediation process. However, with the exception of the leaders who were directly involved in the Burbank Airport mediation, few regional decision-makers knew of the attempted mediation and the role played by the WJC-SCAG dispute resolution project.

B. El Toro Marine Base Conversion (A System Three Dispute)

Several members of the Advisory Committee represented jurisdictions either actively involved or with significant interest in the outcome of this dispute. Because there were a number of disputes in the region regarding the conversion of former military bases to private use, the Committee believed that resolution of this would provide a good prototype for similar disputes. They accordingly recommended this dispute as a prime candidate for a mediation pilot project.

The Advisory Committee selected TMI's president to act as convener to evaluate the feasibility of a mediation process and allocated SCAG funds for this purpose. Once selected, the convener was to operate independently and provide a neutral set of findings. Several committee members made contact with key stakeholders to initiate the effort. The County Supervisor who represented the area was a strong advocate of the use of ADR and agreed that a convening process was appropriate.

The dispute over future use at El Toro spanned numerous years and included nearly all of the municipalities in Orange County. In the past, there had been several rounds of litigation and several ballot initiatives attempting to force a solution for the complex. Opponents of converting the base to the airport claim that the airport noise and traffic will impact their communities. Proponents point to the economic benefits from having an international airport. Groups wishing to further guarantee that John Wayne Airport in Newport Beach could not expand or seeking closure of John Wayne airport generally supported the airport conversion. Regional groups viewed the proposal as addressing the needs of the region to accommodate a growing population and economy.

The convener interviewed elected officials, community and business leaders throughout Orange Country over a period of four months. The interviews included questions regarding the history of the dispute from the perspective of that individual or group, what issues might lend themselves to negotiations and indications of a willingness to participate in mediated talks.

Although some community leaders were interested in considering mediation, a number of parties believed that they would prevail in current litigation efforts and in an impending ballot initiative. They did not want their opponents to infer that they might have some doubts about their ability to prevail in either setting. The convener had extraordinary difficulty contacting some of the key antagonists, thus suggesting that a mediated approach would not be feasible.

The convener concluded that a mediation effort would not be appropriate at this time. There was a suggestion on how to grapple with one of the sub-

issues, noise mitigation by jointly retaining neutral noise experts to conduct a study on behalf of all of the parties. However, this recommendation was not advanced by any of the parties after they received the convening report. Thus the pilot effort was concluded.

Since the convening did not result in the initiation of a formal mediation process, it did not serve to enhance the visibility of the WJC-SCAG dispute resolution project. The report did lead to several inquiries about the application of mediation to other disputes that were subsequently handled by project staff. One of these inquiries resulted in a formal mediation process described below.

C. LAX-El Segundo Airport Noise Mitigation Litigation (A System Three Dispute)

Project representatives succeeded in providing mediation services that resolved a longstanding dispute between the City of El Segundo and Los Angeles International Airport (LAX) regarding the level of payment for noise mitigation to homes in the vicinity of LAX. In addition to the issues related to the litigation, the parties focused on an approach for improving future communication and cooperation between these two jurisdictions. Both ongoing airport operations and airport expansion proposals were to be addressed.

This case underscores the importance of bringing decision-makers face to face to attempt to resolve a dispute that may have been unnecessarily escalated by staff efforts or miscommunication regarding the position of their jurisdictions. The case was referred to the Consortium as a result of outreach work by the SCAG ADR Coordinator who also served in the convening role. Multiple roster member profiles were presented and TMI's president was selected as the mediator. Details about the dispute cannot be shared because of confidentiality.

D. Ventura County Agricultural Policy Working Group (A Subregional System One Dispute)

Ventura County staff contacted the Consortium to obtain the names of potential candidate facilitators to work with a Ventura County advisory committee charged with developing recommendations on agricultural policy into the 21st century. After reviewing the resumes of multiple roster candidates and conducting in-person interviews of the finalists, TMI's president was se-

lected as the facilitator. Funding for the facilitation was provided through the Livable Futures Program to the Ventura Council of Governments. The request for service was generated both as a result of a training program conducted for staff in the subregion by the Consortium and the outreach efforts of staff and Advisory Committee members.

The Board of Supervisors convened the group to provide recommendations on future policy directed towards preservation of agricultural lands. The group represented diverse county ranging from proponents of stopping any further conversion of agricultural lands to development interests that wanted to keep open opportunities for commercial and residential growth. There were also representatives from each of the cities with significant agricultural lands remaining and three members of the Board of Supervisors.

The facilitator was retained several months after the group had begun its deliberations, but before they had begun discussion to set specific policy directions. Subcommittees were formed with chairpersons appointed from among the members. The facilitator assisted at meetings of both the full committee and subcommittees. Since this was not a mediated process, there were some between-meeting contacts with each of the key interests regarding issues under discussion, but not to the same degree that might have occurred in a formal mediation. The facilitator was periodically requested to synthesize the proposals submitted by individual members in an effort to identify a more manageable range of alternatives and common ground.

The Working Group also sponsored a series of town hall meetings to obtain public input on a series of agricultural land conversion scenarios including preferences for specific strategies that might be implemented to achieve the outcomes painted in the scenarios. The facilitator served as moderator of these meetings as well. The result was adoption of consenting recommendations with no dissenting report from the advisory committee. The final set of consensus recommendation negotiated by the Working Group were presented to the Board of Supervisors for adoption. Some of the key recommendations regarding controls on future conversion were rejected by the Board, while other elements were adopted and are in the process of being implemented.

E. Alameda Corridor Dispute (Proposed, but deemed inappropriate as pilot)

This longstanding dispute over a rail corridor connecting the Ports of Los Angeles and Long Beach and downtown Los Angeles had important implications for regional economics, air pollution mitigation and future regional policies pertaining to environmental justice. The communities between Long Beach and Los Angeles brought litigation against the project over a number

of environmental impacts. These communities, which had significant low-income populations, argued that they were being impacted by the project, both during and after construction, while most of the economic benefits went to the large port cities. There also were a number of issues pertaining to governance of the corridor commission, which was dominated by the two large cities.

The Advisory Committee suggested this dispute as a potential pilot effort and made initial inquiries at several junctures with some of the key parties to determine whether they would be willing to participate in a convening process. However, ongoing attempts by the parties themselves to resolve their litigation as well as strategic reasons expressed by several of the key disputants suggested that this dispute would not be appropriate as a Project pilot mediation.

F. 710 Freeway Dispute (Proposed, but deemed inappropriate as pilot)

The dispute between the proponents of extending the 710 Freeway through South Pasadena and the leadership and residents of the areas that would be affected, including the City of South Pasadena, had been raging for several decades, with no resolution in sight. Because several rounds of litigation had taken place in conjunction with political maneuvering at the local, state and federal level, emotions remained particularly charged throughout the process. Each side had won and lost several rounds and each was counting on prevailing at the next level of appeal, either through their litigation or with the assistance of federal officials.

One could argue that if this dispute could possibly be mediated, there would be lines of people outside the mediation room wanting to have the dispute finally resolved. As in the case of the Alameda Corridor dispute, inquiries were made to key parties regarding the option of conducting a convening assessment. However, without the support of every key interest to participate in examining the feasibility of mediation, it is inappropriate to proceed. Accordingly, this dispute was rejected as a pilot case study after several rounds of calls indicated that mediation was not going to be welcomed as a viable option.

G. Regional Transportation Plan (RTP) (System One Dispute)

Every three years, SCAG is required to prepare a twenty-year plan that describes long-range transportation objectives and measures for achieving those objectives. The plan must also incorporate all of the specific transportation programs that member agencies are proposing to have funded on a project-by-project basis. To be approved by the federal government, the plan must establish regional priorities, demonstrate coordination among subregions and projects, and comply with federal and state laws with respect to air quality and environmental justice. An approved plan is mandatory for the region to receive federal matching dollars.

SCAG's draft RTP was released in the spring of 1997. A number of potential controversies emerged which prompted several members of the Advisory Committee to propose that mediated talks be convened among all of the key regional stakeholders. This proposal was rejected in favor of waiting until the number of issues in dispute could be reduced and narrowed in focus. Soon thereafter the Agency received a letter on behalf of a coalition of environmental organizations challenging the plans compliance with the environmental justice provisions of ISTEA (Intermodal Surface Transportation Efficiency Act of 1991)³¹ and the Civil Rights Act.³² They indicated that the plan, if enacted as drafted, would not come close to meeting the transportation needs of the working poor and minority communities in the region and, if not revised, would be challenged in court as a civil rights violation.

The ADR Advisory Committee, which had been advocating the use of ADR for designing the RTP, proposed to the Regional Council that it enter into a formal mediation process with the environmental coalition to attempt to address the issues raised in their correspondence. The Council concurred and charged the Advisory Committee with selecting a neutral from the Consortium roster.

There were three mediated sessions held over a six-month timeframe. The lengthy interval between meetings was necessary because of the time required to draft and redraft the document. Each re-draft was presented to the negotiating group for its consideration. There also were several intervening steps in which the Regional Council was asked to react to drafts that on several occasions delayed the negotiation process because of tentative decisions to fund rail transportation projects that were viewed by the environmental community as contrary to the goals of equalizing access to transportation.

31. Pub. L. 102-240, Dec. 18, 1991, 105 Stats. 1914.

32. 42 U.S.C. § 1981 (1994).

At the last session, an agreement was reached on key language to be inserted into the Plan that would make the RTP consistent with the consent decree issued by the federal courts regarding the provision of improved bus service for low-income neighborhoods in the region. There were still some differences on the specific projects to be proposed in the plan, but the negotiations ended on a positive note with an understanding between the SCAG leadership and the environmental coalition representatives that they would work together to accomplish the set of mutually desirable goals that had been incorporated in the plan.

One of the offshoots of the mediation process was an agreement by representatives of the environmental coalition to work with SCAG staff to plan and participate in public forums held to obtain public input on the draft plan. This led to a significant improvement in the amount of participation from low-income citizens in the overall RTP planning process.

This mediation process, unlike the earlier mediation efforts that took place during the Project timeframe, did heighten the awareness and understanding of SCAG officials who were directly involved to the potential benefits of engaging in mediated talks. However, since the negotiations had been focused on a limited set of issues, it was difficult for the ADR Advisory Committee to promote the process among other members of the Regional Council as an approach that should be utilized at the onset of the next planning cycle. The process was viewed as more appropriate for handling a subset of the disputes that might erupt during the debate over an RTP rather than as a proactive approach for accommodating diverse regional interest in a manner that would be more satisfactory than the crisis approach that typically characterizes the RTP adoption.

V. THE PROJECT AT MIDSTREAM

After a few years of seeking to implement the project without ever having secured funding, the project was substantially reactive, periodically exploring the providing of services on an ad hoc basis. The lack of resources seriously undermined the plans for proactive training, promotion, education and recruitment of sub regional COG support. While this program was being officially endorsed by SCAG, some SCAG staff members at the regional and subregional levels may have perceived that this consensus building approach undermined their power and position in SCAG's traditional handling of conflicts. Subtle and not so subtle resistance was experienced. In addition,

SCAG's legal counsel who served as project liaison received extensive additional responsibilities in an unrelated internal SCAG reorganization. She continued to be personally committed, but her broadened professional duties necessitated that she not be as focused and available.

After several years, during which time responsibility for the project was falling more and more on TMI's president, WJC hired its Executive Director. He provided an influx of fresh enthusiasm and re-energized the fund raising effort for this project. TMI's president crafted another grant proposal which WJC's Executive Director presented to a variety of possible funders. The only positive response was from the same foundation who funded the System Design Phase. Unfortunately, its funding priorities prevented the funding of implementation activities. Wanting to support the project as much as possible within their priorities, they awarded funds to produce a video about the project and to evaluate the impact of the project.

The project team was grateful for the acquisition of more project funds, but also aware that the specific purposes of those funds meant that the project's effectiveness would be evaluated without the implementation stages having ever been funded. The project team was optimistic that the evaluation effort would raise the visibility and hopefully the utilization of the project. Even during the dual continuing shoestring implementation effort and evaluation effort, TMI's president continued functioning as the volunteer WJC Roster manager and primary project manager because the WJC Executive Director was responsible to oversee the vast array of WJC's activities and projects.

Before sharing the results of this evaluation in the next section, it is necessary to share an evolved strategy that surfaced during the evaluation stage. Until this point, the project team imagined a highly credible institution qualifying prominent mediators and facilitators to respond to requests for assistance for highly visible and critical disputes between local municipalities or between a municipality and SCAG. The effort was designed to establish a regional dispute resolution center for local governments and to seek highly visible demonstration cases to convince other disputing municipalities in the region to come to this center.

While seeking to develop that model, members of the SCAG ADR Advisory Committee began to envision how mediation and facilitation capacity on a smaller scale could assist with the multitude of disputes each of their staff and elected officials sought to resolve. Over a period of months the emphasis of the SCAG ADR project shifted to supporting the creation of "city hall annexed" dispute resolution programs in three cities. Assistance was provided in recruiting and selecting community volunteers and then providing training programs and mentoring experiences for those volunteers and city employees. Finally SIDR extern students and Fellows served as quasi-staff and conveners

of these programs. As long as there were SIDR students and Fellows to serve as staff conveners, these programs experienced considerable success.

For example, a case was brought to the attention of a city staff person at one of the cities involving an individual and a community council and had generated significant media coverage in both local and area papers. The individual had been an appointed member of the council and at one point, for various reasons, was censured by the council. Over the following two years, accusations ran rampant from all parties, without any solutions being found. The censured party claimed that due process had not been followed; both sides pursued cases in court.

After learning about the volunteer mediation program, one party contacted the city staff person to pass along the disputing parties' names to the ADR program. Once contact was made with the parties, the SIDR fellow and one volunteer mediator from the local ADR program met with each of the parties individually. From these meetings, the mediators developed a list of issues and interests of the parties. This list was submitted to the parties prior to the mediation session itself. Approximately one month after the initial contacts were made, the parties and mediator sat down at the Western Justice Center Foundation offices and after only three hours of negotiations, worked out an agreement which all parties signed on August 18th. A press release describing the outcome was prepared by the mediator.

The focus of the project has evolved. While the highly qualified, professional, large dispute resolution capacity will be maintained, the SCAG ADR project is significantly focusing on supporting local governments' efforts to establish "city hall annexed mediation programs." As the day to day problems like code enforcement are increasingly resolved through mediation and facilitation, the elected and staff officials from those municipalities with city hall annexed dispute resolutions programs will be more likely to utilize facilitated consensus processes for the inter jurisdictional mega disputes.

VI. EVALUATION OF THE PROJECT

A. *Introduction*

The following is based on an earlier report that was prepared under the auspices of a grant awarded by the Haynes Foundation to the SCAG Public Policy Dispute Resolution Consortium, which consists of the Western Justice Center Foundation (WJCF), The Mediation Institute (TMI), and the Straus In-

stitute for Dispute Resolution (SIDR) at Pepperdine University School of Law.³³ An additional participant was the SCAG ADR Committee. Key project team members were Bill Drake from the WJCF, Alana Knaster of TMI, and Professor Peter Robinson, SIDR Associate Director. The grant was provided to fund the Public Policy Dispute Resolution Program. The grant required that a consultant prepare an evaluation report to assess the program. The consultant, a co-author of this article, was independent of any of these grant organizations.³⁴

B. History of Project Evaluation

The Public Policy Dispute Resolution Program evaluated in the report that provides the basis for this article was in active operation from 1996-1998. The evaluation part of the project took place from May 1997 to September 1998. The evaluation process was collaborative,³⁵ and utilized survey questionnaires and interviews, both over the telephone and in person.³⁶ The first stage, which took place over the spring and summer of 1997, included the development of a briefing book relating to SCAG, and an earlier version of the Questionnaire Database.³⁷ The second stage, which took place during the 1997-1998 academic year, included the development and revision of the survey questionnaire and interviews.³⁸ The third and final stage of the project took place during the summer of 1998 and was dedicated to the completion

33. See text and notes, *supra* at notes 20-21.

34. Professor Gregory L. Ogden, the author of this evaluation report, was retained as a consultant to do the evaluation, and prepare a report. Professor Ogden teaches at Pepperdine University School of Law, but has no affiliation with the Straus Institute or with any of the other project participants. His report contains an independent evaluation of the program. Professor Ogden has been a consultant to the Administrative Conference of the United States for which he prepared consultant reports on two different projects, he was also a consultant (1996 to 1998) to the California Law Revision Commission in the administrative law field.

35. Professor Ogden worked with three different research assistants in the course of doing the evaluation and preparing the report. Professor Ogden met on a number of occasions with Alana Knaster and Peter Robinson during the project time period to work out the project methodology. A final meeting with Alana, Peter, and Bill Drake was held in June, 1998.

36. See Appendix A, at the end of the article for the survey questionnaire that was utilized.

37. This work was done by Professor Ogden, with the assistance of research assistant, Cristina Moser, Pepperdine School of Law Class of 1998.

38. Professor Ogden was assisted in this stage of the process by Muriel Lavendar, a student in the Master's in Dispute Resolution program at Pepperdine University School of Law. Ms. Lavendar assisted with a variety of tasks. She conducted both telephone interviews, and live interviews with persons who were familiar with the program. She also attended some SCAG ADR committee meetings. She has also worked on case studies for Alana Knaster. Finally she supplied interview data to Professor Ogden for this report. Also, Alana Knaster provided early interview composite responses.

of the survey questionnaire.³⁹ This questionnaire was sent to persons on the SCAG mailing list.⁴⁰ Surveys that were returned were compiled into a database for analysis⁴¹. Also, a telephone interview questionnaire was developed by Professor Ogden.⁴² The telephone interview results were compiled into a database.⁴³ Pepperdine University law student Jennifer Elliot assisted Professor Ogden in this stage of the project.⁴⁴ The project culminated in September, 1998 with the writing of this report.

C. Evaluation Project Methodology

The evaluation project methodology incorporates survey questionnaires and interviews to identify issues and problems, assess the public policy dispute resolution program, and access the knowledge base of local public officials in the six county region served by SCAG. The data analysis is based on the data compiled in the telephone interviews and the survey questionnaire responses. The great number of responses to the survey questionnaire leads to some insightful conclusions. The data developed in the survey questionnaires and telephone interviews that were reported in the evaluation report provide a great deal of useful information that will assist designers of future public policy dispute resolution programs, as well as providing for an assessment of the existing program.⁴⁵ The analysis contained herein will interpret the data, while being careful not to overstate the facts when the sample is too small, or when it is unclear that the data supports any particular result. Thus, if the data sample is too small, that fact will be expressly stated, but conclusions will be presented when the data sample is large enough for reliable conclusions. Comments will be made concerning small data samples only when appropriate.

39. See Appendix A, at the end of the article for the survey questionnaire that was utilized.

40. The mailing list names were provided by SCAG. The list included then current elected and staff officials from cities that were SCAG member entities.

41. Gregory L. Ogden, Final Evaluation Report and Materials, (Sept, 1998) (Chapter 3. Mailed Survey Questionnaire Results).

42. See *id.*

43. See *id.*

44. Jennifer Elliot, Pepperdine University School of Law class of 2000. Professor Ogden is indebted to Ms. Elliot for the compilation and presentation of the data in Chapters Three and Four. Professor Ogden is also grateful for Ms. Elliot's hard work in conducting numerous telephone interviews with very busy public officials.

45. See *supra* text accompanying notes 38-40.

D. Analysis of Survey Questionnaire Results

Survey questionnaire respondents were primarily affiliated with local agencies from smaller cities in the region and included elected officials, staff, and others of unknown affiliation. The questionnaire was mailed out to 1124 names on the SCAG mailing list.⁴⁶ One hundred (100) survey questionnaires were returned completed, slightly less than a 10 per cent return. The response rate was fair, considering: 1) the questionnaire was ten pages in length, and, including the comments section, required about fifteen to twenty minutes to complete; 2) the local public officials and staff who were asked to complete the questionnaire have very busy professional lives; and 3) most of those who responded did not have much prior exposure to the public policy dispute resolution consortium or program, and yet they were interested enough in the subject to give us the benefit of their ideas.

Seventy-five (75) out of 100 survey respondents identified themselves as affiliated with local municipalities, or agencies. The next largest group listed no affiliation, with a smattering of respondents from SCAG, COG, or subregion. 66 out of the 100 municipalities had populations under 100,000 persons, 14 had populations in the 101,000 to 500,000 range, and 13 made no response. Thus, a substantial majority of survey respondents are affiliated with local municipalities from relatively smaller cities in a large region. Fifty-six (56) out of 100 respondents identified themselves as elected officials, 32 as senior staff, and 12 did not respond. The views expressed in this survey are overwhelmingly from the local level, and include enough of the two key groups —elected officials and senior staff—for those views to be compared with the perspectives of individuals with different stakes in the local governmental decision making process.⁴⁷

Survey respondents reported overwhelmingly that the Public Policy Dispute Resolution Consortium program had no impact or very little impact on their city. In question one, survey respondents were asked to rate the impact of the public policy dispute resolution consortium on their city. Ninety-five (95) out of 100 survey respondents chose the alternative of none or very little. 5 out of 100 selected some or very much. The questionnaire was structured so that the prior group were asked to answer question 2 through 10, while the latter group were asked to answer question 11 through 20. Given the number of responses to the impact question, there are enough responses to questions 2 through 10 for the data to be significant, but insufficient re-

46. *See id.*

47. *See id.*

sponses to questions 11 through 20 for that data to be significant.⁴⁸

The questionnaire does not provide a mechanism for explaining why the program had little or no impact in the cities in which the 95 respondents were located. There is therefore no statistically significant data to explain why the program had a minor impact in those cities. However, it is safe to say that the 95 to 5 ratio in answers to question one probably reflects the vast size of the SCAG six county region, which includes a large number of cities (184), residents (16, 261, 600), and local officials (1528), compared to the relatively small size of the Public Policy Dispute Resolution program.

The small size of the program relative to the region served is illustrated in the responses to question two of the survey. 59 of the respondents in question two, which asked about the ways that persons were exposed to the PPDRC program, selected the choice of "no exposure." Because of multiple responses to this question, the total responses were 133, yet 59 responses is highly significant since survey respondents who selected that choice are less likely to have picked another choice. Thus, it is a fair inference that 59 out of 100 respondents had no exposure to the program. The next three responses in frequency of selection were: SCAG communications (25 responses), word of mouth (13 responses), and PPDRC brochure (12 responses). The response distribution is consistent with the disparity in size of the region and the program. The majority of respondents did not know about the program, and the minority that did become aware of the program did so in a variety of ways.⁴⁹ The response rate to the survey (95 out of 100 respondents) of persons whose cities were not affected or affected only very little by the public policy dispute resolution program is indicative of a high level of interest in the use of alternative dispute resolution in public policy disputes by these respondents.⁵⁰ This observation is supported by data discussed below.

Survey respondents indicated significant interest in using neutral mediators to resolve public policy disputes; however, they also indicated very low actual use of neutral mediators by local municipalities. 49 out of 95 survey respondents indicated that their agency had disputes with other governmental agencies, SCAG, or other constituencies that would have been aided by a neutral mediator. This positive response rate is almost half of the 100 total responses, and slightly more than half of the 95 persons who answered

48. *See id.*

49. *See id.*

50. *See id.*

this question. 46 respondents disagreed. Oddly, very few of the respondents indicated that their jurisdiction or agency had retained or appointed a neutral mediator to assist in resolving an issue with another local governmental agency (8 yes, 77 no, 10 no response), with SCAG (1 yes, 84, no, 10 no response), and with members of the public (26 yes, 66 no, and 3 no response).⁵¹

The paradox could be explained if the survey respondents attitude toward mediator involvement was not positive, or if survey respondents indicated that there were not sufficient resources available to support the use of mediators. However, the available data does not suggest these as reasons. 54 out of 95 respondents (37 no, and 4 no response) indicated that their agency currently had sources and resources to select qualified public policy mediators. Also, 71 out of 95 respondents (16 no, 8 no response) indicated that they believe that their agency should involve qualified mediators for some disputes. The survey data does not provide any reasons that would explain the apparent disparity between very positive attitudes toward mediators, but fairly low use of mediators. It can at least be said that there is potential for greater use of mediators in dealing with public policy disputes in the cities where the survey respondents are located.⁵²

Survey respondents indicated that staff and elected officials at various levels in the region were unaware of the public policy dispute resolution consortium program. Question 7 asked about attitudes of various staff and officials toward the program. The highest response for SCAG staff (46 out of 95) was “unaware” and the second highest response (24 out of 95 for SCAG staff) was no comment. There were similar responses for COG staff (49 unaware, 24 no response, out of 95). With elected officials the “unaware” response was first (52 out of 95) but the second choice was “neutral” (21 responses out of 95). For senior staff, the first choice was also “unaware” (51 out of 95 responses), but the second choice was “supportive” (17 responses out of 95), and a close third was “neutral” (15 responses out of 95). The attitude responses for elected officials and senior staff across the region were similar to the SCAG and COG staff. For both elected officials and senior staff, the first choice was “unaware” (50 responses for elected officials, and 51 responses for senior staff), and second most for both was no response (17 for elected officials, and 20 for senior staff).⁵³

51. *See id.*

52. *See id.*

53. Gregory L. Ogden, Final Evaluation Report and Materials, (Sept. 1998) (Chapter 3, Mailed Survey Questionnaire Results).

These responses show that the majority of survey respondents believed that other officials and staff in their cities were unaware of the program. The survey results do not explain this phenomenon. However, given the size of the region⁵⁴ and the relative size of the program, the lack of a wide impact may be simply justified as too little time and money for the program to significantly impact the six county region. Alternatively, it may be explained by the competing demands of the lives of these very busy professionals who are elected officials or senior staff of local cities. Finally, a larger and more well funded program that is supported over a longer period of time might have a wider impact on public officials.

Survey respondents were strongly supportive of mediation and facilitation to resolve public policy disputes but less positive about SCAG's role in the process. Survey respondents were asked in question 8 to rate five statements based on their experiences or observations. 55 out of 95 agreed (42 responses) or strongly agreed (13 responses) that localities will increasingly use mediation or facilitation to resolve public policy disputes and build consensus. 71 out of 95 disagreed (52 responses) or strongly disagreed (19 responses) that localities will never use mediation or facilitation to resolve public policy disputes and build consensus. 64 out of 95 agreed (48 responses) or strongly agreed (16 responses) that they need mediation and facilitation available for smaller disputes within their locality, not just for large, regional conflicts. 66 out of 95 agreed (56 responses) or strongly agreed (10 responses) that mediation and facilitation can help improve decision making within their region.⁵⁵

The rating of the fifth statement, "We have all the systems in place through SCAG to resolve policy disputes within the region, because this is one of SCAG's functions," was somewhat different. The most common response was "neutral" (40 responses) second was "disagree" (26 responses), and third was "strongly disagree" (11 responses). The disagree and strongly disagree responses total 37, which is slightly less than the 40 neutral responses.⁵⁶ The survey did not contain data or questions to explain why there were differences between the responses to statement five, and the other statements. This difference is worth further study, which is beyond the scope of this report.

54. *See id.*

55. *See id.*

56. *See id.*

Survey respondents identified the needs for more information, more training, and more confidence by agency officials as the top three barriers to the use of qualified public policy mediators and facilitators. Survey respondents were asked to identify barriers that currently exist to utilizing qualified public policy mediators and facilitators. The top three responses to the barriers questions were “need more information” (78 responses), “need more training” (57 responses), and “need more confidence by officials” (49 responses). The total response was greater than 100 because survey respondents were asked to check all answers that apply. Five possible barriers were identified in the survey instrument, but respondents were also asked to identify other barriers in a separate comment section. Some of the individual responses overlapped with the stated barriers, but no one item in the comments occurred frequently enough to be statistically significant.⁵⁷

They rated providing more information, more training, and more opportunities to participate as the top three ways to overcome barriers to the use of qualified public policy mediators and facilitators. The survey respondents were also asked to rate ways to overcome these barriers. The survey respondents rated highly two of the same three ways to overcome barriers, “provide more information” (71 responses) and “provide more training” (55 responses). These responses indicated the most highly rated barriers. However, as to the third highest rated choice of ways to overcome barriers, survey respondents choose (with 45 responses), the statement, “provide opportunities for agency officials to participate in resolving specific disputes in their jurisdictions” followed closely by the fourth highest rated choice, “build more confidence in agency officials” (44 responses). As with the previous question, the responses total greater than 100 because respondents were asked to check all choices that apply. The third and fourth responses are so close in frequency that the differences between them are not statistically significant.⁵⁸

This data suggests some emphases for whichever agency or entity is willing to support the future implementation of the public policy dispute resolution program in the six-county SCAG region. Providing more information and training on an ongoing and sustained basis that would be consistent with the statistical data in this section could be done through a well-funded program that has a longer time period within which to work. This data also suggests that doing nothing or ending the program without providing a new program in its place is not supported by the officials responding to these questions.⁵⁹

57. *See id.*

58. *See id.*

59. *See id.*

Interestingly enough, the third choice, to provide opportunities for agency officials to participate in resolving specific disputes in their jurisdiction, could provide an additional mechanism for providing training, information, and building confidence in agency officials. These opportunities could be provided through projects with specific focuses in a limited or self contained part of the SCAG six-county regions. Examples of this approach can be found in the telephone interviews that describe the Regional Transportation Plan Mediation and the Agricultural Policy Working Group.⁶⁰

Survey respondents rated most highly PPDRC programs to present training programs and provide technical support, followed by promoting rosters of qualified mediators and providing educational resources. Survey respondents were asked in question ten how they thought that the PPDRC program could best assist local governments in utilizing qualified public policy mediators and facilitators. The respondents ranked as their first choice present training programs, with 50 first or second responses (34 first, and 16 second). Respondents ranked as their second choice to provide technical support, with 34 first or second responses (14 first, and 20 second). There was a tie between promoting roster of qualified mediators, and providing educational resources for third (with 20 first or second responses).⁶¹

Survey respondents were also asked to rank their preferences for the audience that the PPDRC program should emphasize in providing its programs, or have the most focus or emphasis upon as a target audience. The respondents ranked to focus on subregion COG gatherings of elected officials first with 48 first or second responses (23 first, 25 second). The second rank was to focus on region wide gatherings of elected officials, with 40 first or second responses (26 first, and 14 second). The third choice was to focus on agency senior staff with 31 first or second responses (17 first, and 14 second).⁶²

The small number of telephone interview respondents were very positive about the video produced for the PPDRC program, and the training provided. While the sample was too small for statistically significant results, six out of seven respondents either strongly agreed or agreed that the video provided useful information about the public policy dispute resolution program. Also, five out of seven respondents either strongly agreed or agreed that the video met individual needs for participating in the public policy dispute resolution

60. *See id.*

61. *See id.*

62. *See id.*

program. Finally, seven out of seven respondents either strongly agreed or agreed that quality of the video production met their expectations.⁶³

Similarly, while the sample was too small for statistically significant results, the telephone interview respondents who participated in the training were positive about the training sponsored by the PPDRC program. Nine out of nine respondents either strongly agreed or agreed that the training provided useful information about the public policy dispute resolution program. Also, nine out of nine respondents positively answered the question “did the training provide useful skills that met your individual needs for participating in the public policy dispute resolution program?” Further, eight out of nine respondents either strongly agreed or agreed that the quality of the training experience met their expectations. Finally, nine out of nine respondents answered “yes” to the question, “Would you recommend that training of this type be provided in the future to other elected officials and staff at your city?”⁶⁴

The individual comments that follow each of the responses to questions provide a wealth of information that is too random to be quantified, but could be very useful to persons who are designing future training and video programs. Also, the very small sample of interview respondents who participated in the Regional Transportation Plan Mediation makes the data inconclusive. However, more interview respondents participated in the Agricultural Policy Working Group. There were 15 responses to the interview process that focused on the agricultural policy working group. Nine out of fifteen respondents either strongly agreed or agreed with the question “did the agricultural policy working group meet your expectations for use of dispute resolution techniques as a means of conflict resolution for public policy disputes?” While a small sample too small to be statistically significant, the extensive comments following that question and a series of three related questions could provide a wealth of information for persons who are designing future working group or case study processes for dispute resolution in the public policy arena.⁶⁵

63. *See id.*

64. *See id.*

65. *See id.*

VII. OVERALL PROJECT CONCLUSIONS AND RECOMMENDATIONS

A. *Introduction*

The SCAG ADR Project, later renamed the Public Policy Dispute Resolution Consortium, was initiated to address the growing number of disputes over federally mandated programs which resulted in a gridlock in regional decision-making concerning critical programs and projects. The primary objective of the project has been to promote the increased use of alternative dispute resolution for problem solving in the region. During the first phase of the project interviews of regional leaders indicated there was little understanding of the full range of ADR options available for use by public agencies. A number of jurisdictions were familiar with, and had utilized arbitration to resolve litigation, but confused this process with mediation and other consensus-building processes. Of the regional leaders contacted, the overwhelming majority suggested that local government would likely utilize a formal conflict resolution process, such as mediation, if there were several high profile case examples of its successful application in southern California. They strongly urged that mediation and other alternative dispute resolution services be provided by dispute resolution professionals with experience in local government matters. This would be accomplished by a referral mechanism not under the control of SCAG. Regional leaders also stressed the importance of the continued promotion of training for elected officials and agency staff in the region on the use of ADR processes. The high profile cases, coupled with process education, in their opinion, would result in a significant reduction in the barriers to the use of these processes. SCAG's governing body, the Regional Council, concurred with these recommendations and voted to initiate Phase 2 of the Project.

B. *Project Conclusions*

The results of the survey administered by the Project Senior Researcher indicate there is a greater understanding of the potential use of mediation in public policy disputes and interest in learning more about these processes than was suggested during the interviews of regional leaders several years prior. However, the survey also indicates that barriers to the use of mediation by regional governments still exist, and that regional leaders have indicated

that the Project has had little impact on their cities. Therefore, one must conclude that the project hypothesis, that *successful mediation of high profile cases coupled with extensive education on the use of ADR would result in increased use of ADR services*, remains unproved.

C. Project Constraints

Before discussing or further analyzing the efficacy of the pilot cases and educational efforts, it is important to describe some of the constraints that affected the ability of the Project and Project staff to fully implement each project component. A number of factors intervened during the course of the Project that may explain why the Project appears to have had minimal impact on SCAG member jurisdictions. These constraints included the following factors: first, with the exception of the Haynes Foundation grant funds, which were limited to the research elements and development of outreach materials that were part of the evaluation, the Project relied on in-kind staff time contributions from SCAG, SIDR, and TMI as major sources of project personnel. SCAG's Regional Council allocated \$200,000 for pilot case studies, but these pilot cases had to be restricted to transportation-related disputes. These funds were subsequently cut back to help make up for a shortfall elsewhere in the budget and were not replaced. Therefore, the Project had very limited financial and staff resources. Additionally, the resources were not available to extensively educate officials, and there was no successful mediation of a high profile case. There were other project constraints as well.

Secondly, SCAG underwent a major reorganization when the ADR Coordinator was assigned other responsibilities in addition to managing a large department. Although she had a few additional staff members who could participate in Project activities, the majority of staff time was allocated to other departmental tasks. Also, the ADR Coordinator could not devote the number of hours originally intended to manage certain envisioned aspects of the Project. Finally, although Pepperdine student volunteers provided important services to the project, they each had schedule limitations and there was turnover after each semester.

Third, there were a number of opportunities to initiate pilot projects on critical issues in the region, but there was significant resistance by staff and some of the key elected official leadership to considering ADR as an option. For example, in the case of the RTP, many officials preferred to rely on the 'politicking' process of which they were most familiar, arguing that SCAG always manages to produce a Plan even with controversy along the way. Arguments that a consensus process might be more satisfactory to a broader set

of constituencies or might result in a better product were not persuasive enough to change this viewpoint.

Most importantly, the project staff underestimated the role of SCAG staff and staff in each of the participating agencies in determining whether mediation would be considered for resolving several of the more controversial disputes that erupted during the project time frame. Because elected officials were considered the primary audience for training and outreach activities, project staff directed their marketing efforts at elected officials, assuming they would determine policy for their agencies. Although the decision to utilize mediation or another ADR approach is clearly vested in with the governing body of SCAG, the Regional Council, with each of the city councils that were SCAG members, any initiative to consider a different approach rested with staff. The staff became the obstacle to implementing mediation proceedings, because they, not their “bosses,” perceived mediation as a threat to their responsibility as problem solvers for their agencies. At the point when this “barrier” to project success became apparent, the project took extraordinary steps to involve staff in training. Unfortunately, their effort was too little and too late to have much impact.

Fourth, although the ADR Advisory Committee provided excellent leadership for the Project, they did not achieve the stature needed to lead the Agency until well into the second year of the Project. Additionally, it was also very difficult to schedule meetings without conflicts of schedules. It would have been advantageous to schedule meetings on the same day as the Regional Council, but most of the members participated on other committees and could not fit in a session of the Advisory Committee.

Even as the ADR Advisory Committee increased its visibility, it became obvious that other elected officials and staff saw the Committee as an auxiliary program rather than as an integral aspect of everyday agency activities. Cases were referred to the Committee only as a last ditch effort and with significant opposition from regional staff both within SCAG and in the subregions. Staff considered mediation sessions an additional burden to overcome, rather than an opportunity to explore other options.

One of the more critical lessons learned from the project was that any ADR program needs to be integrated into existing programs for it to be accepted. The labeling of a program component as “ADR” in itself practically relegates ADR-related activities to second class citizenship. Among techniques that should be incorporated into all aspects of agency planning and decision-making are convening key interests, ascertaining concerns and needs

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outside of major joint meetings, shuttle diplomacy among disputants, and pre-meeting caucusing. Otherwise, these tools are called into play at the wrong time and for the wrong situations. When mediation cannot resolve a dispute at the eleventh hour, one commonly hears, “We told you that mediation doesn’t work.”

Fifth, the Advisory Committee and the ADR systems for the Project were originally designed to include representation from the subregions. This approach was consistent with the bottom-up planning philosophy promoted by SCAG, and with the ADR system approach designed by the Project team in Phase 1. Subregions were designated to play an active role in Project outreach, provide some of the initial screening of disputes, and to receive training to help resolve disputes before they escalated to the regional level. However, the Advisory Committee decided early on that they needed to develop their own leadership and platform before diluting the focus of the Committee. Although there were elected officials representing most of the SCAG Counties, it was difficult to get the “word out” to the subregions unless a Committee member spearheaded a presentation at a subregional COG meeting. Staff participation from the subregions might have provided an added ability to involve members and expand the Project’s outreach capabilities.

Sixth, the association of the Consortium as a “SCAG” project had a positive and negative impact. The senior researcher’s findings indicated that it may indeed have been a major detractor. This is consistent with the findings in Phase 1. However, there were numerous referrals that came to SCAG directly from members rather than through the Consortium suggesting that the affiliation with SCAG was not a deterrent to a number of members. The survey instrument was unable to determine whether respondents knew that the actual services were independent of SCAG, which served as a clearinghouse, not as a service provider. It is possible that disputants who made their contacts through SCAG were aware of the established separation of functions. Seventh, Project publicity did not consistently represent the relationship with SCAG. When it appeared advantageous, Project staff worked closely with SCAG staff and Advisory Committee members to publicize the Project’s services and the advantages of ADR approaches. Additionally, the training was provided under the auspices of SCAG and SCAG provided funding for the case studies. However, outreach materials were designed to promote the Consortium as an independent entity. This “dual” identity may have contributed to the perceived ineffectiveness of the Project’s impact on SCAG members’ understanding and utilization of ADR. Did regional leaders who responded to the questionnaire understand the distinction in making their response?

This “in” and “out” relationship of the Project also meant that ADR component was not fully integrated into SCAG operations and decision-

making. Should ADR be a tool that is automatically considered whenever the Agency is developing a strategy for planning or problem solving, or a consultant service that is called in for a crisis? The Consortium needs to carefully evaluate the relationship issue in assessing how to further project effectiveness in the future.

Finally, the size of the SCAG region is one of the Consortium's greatest obstacles and challenges. The success of the revised approach, to assist three cities close to the Interstate 210 Project through the establishment of city hall-annexed dispute resolution programs, which served a limited geographic area in close proximity, may further suggest the need to decentralize future Project activities to maximize the impact the Consortium has on members. Travel and staffing are difficult. Additionally, each geographic area of the region has unique characteristics and problems that require different approaches.

D. Role of Pilot Case Studies

Although the senior researcher concludes the Project had little impact on the respondent cities, the survey does not indicate why the Project did not achieve its intended results. The project constraints described above provide only a partial explanation. It is also necessary to distinguish the role of the high profile pilot cases from the role of educational outreach in affecting the increased use of ADR services, to ascertain whether these strategies are inappropriate tools, or whether the approach utilized by the Project was ineffective. Additional areas for exploration include: Are high profile cases ineffective mechanisms for influencing the use of ADR by elected officials, or were the case studies relied upon by the Project atypical of the types of disputes that might serve as prototypes? Is training on the uses of ADR an ineffective approach, or was the Project outreach effort insufficient or deficient in some manner?

The primary focus of the Project was identification of ongoing disputes that would provide a good model for the future use of mediation. A number of key ingredients are required for initiating mediation, including:

- interest in compromise rather than delay or precedent setting.
- uncertainty about the outcome of ongoing litigation or political action.
- existence of a common ground and a tradeoff balance.
- sufficient dispute on an issue to suggest the need for neutral intervention.
- overlapping jurisdictions and diverse interests requiring process
- design and management
- a litigated win that addresses legal issues, but does not solve the problem.
- parties need to maintain an ongoing relationship with each other.

The ADR Advisory Committee carefully considered these parameters in deliberations regarding pilot project selection, but possible influences by project time and funding constraints may have affected the decisionmaking process. After disputants rejected several offers to provide services, the Project staff and Committee responded to requested opportunities rather than fully evaluating the appropriateness of the dispute as a pilot project. Several cases fit into all of the parameters and were successfully mediated, but the nature of the cases limited their value as examples to be replicated. Because the Advisory Committee was most interested in providing services whenever they were need, these cases were funded by the Project even though they were inappropriate for inclusion in Project “marketing” materials or as a written case study.

Although for the most part, pilot cases were carefully selected and although extensive resources were devoted to the pilot cases, they still appeared to have little impact on the future use of mediation in the region. A number of factors may have contributed to the lack of influence of the pilot projects on the process choices of regional leaders:

1. Case may have been inappropriate as “models” for the use of mediation

Most cities are not involved in protracted disputes with billions of dollars at stake, the so called “mega” disputes. While these make interesting case studies, they do not fall within the range of experience of the typical city official. For example, even a successful mediation of the Burbank Airport dispute would not necessarily have convinced other elected officials to try mediation for a dispute over a new development in their city or to resolve a dispute within the subregion over bus routes.

Disputes with high visibility and high stakes will draw attention to the use of mediation, but non-participants have to rely on press reports about the outcome of those disputes. The focus of a press report of a successful mediation will not be on the mediator but on the parties agreement, or lack thereof. Regional leaders may know that a particular mediation occurred, but are unlikely to learn from even the most detailed press account how the mediation process affected the outcome.

The lack of neutrality of SCAG with respect to some disputed issues in several of the potential case studies did have an impact on the ability of the ADR professionals to help the parties evaluate their interest in participating in an ADR pilot effort. This affected what disputes could be considered as pilots and potentially affected the significance of a given dispute as a model “mediation” for consideration by regional leaders for subsequent conflicts.

Several of the selected pilot cases fit a number of the key criteria governing whether mediation might be appropriate, but were potentially controversial as to prevent compromise, despite their best long term interest. One of the advantages of mediation is that parties retain control over their own decision. This is a disadvantage in a highly charged political environment. This is especially true where parties state their intentions never to compromise. If the court decides the case, the officials from the losing jurisdiction cannot be blamed for “selling out.” This dynamic was true of several of the pilot cases. The failure to resolve these disputes through mediation or even to enter into mediation may have given negative signals to other regional leaders about the viability of mediation as an alternative tool for solving conflicts.

2. Funding for professional ADR services was limited to transportation related disputes

This constrained the options available for consideration as pilot cases to a subset of the issues confronting leaders in the region. Despite potentially broader appeal as models for use of mediation, issues such as air quality, endangered species protection and infrastructure planning in other sectors could not be fully utilized.

3. Mediation is frequently perceived as a process to employ when everything else fails

This was particularly true in the RTP case. Regional leaders are familiar with what happens in litigation and with the political process. They accordingly hesitate to participate in a process that is unfamiliar while risking what is perceived as loss of control and authority. The successful outcome of the RTP mediation did not suggest to regional leaders that mediation be implemented in a full range of conflict situations. Instead, they saw it as appropriate in a unique, constrained set of circumstances and will likely wait for a similar situation to unfold during the next RTP planning process.

4. The Project had insufficient staff resources and Advisory Committee members had limited time to devote to “market” the successes that had occurred in the pilot efforts

E. Role of the Training Programs

As has been noted in Section I, the Project was unable to fully promote its training component to regional officials. However, the senior researcher has noted that officials who received training were positive about its benefits. Conducted training seminars resulted in requests for Project assistance in two of the pilot cases. The initiation of the local city hall annexed programs generated nearly all of the calls for consultation during the project time frame. In addition to the scheduling difficulties that limited the provision of ADR training during the Project timeframe, several additional factors should be cited:

1. The Project did not have sufficient staff resources to make presentations at all meetings held in the region where participants might have been recruited for the training program. There was a reorganization within SCAG that diverted staff originally assigned to the ADR project to other duties. This also severely limited the amount of follow-up to schedule training sessions.
2. The videotape had been intended as a key marketing vehicle for the more extensive training programs. This had limited distribution because of the concern about impacting the results of the evaluation component. Again, the local officials that reviewed the video believe that it would be an effective education/outreach tool.
3. The Advisory Committee and Project staff made several attempts to include an ADR training/outreach component in regional meetings that had scheduled seminars on topics of interest to members. In the first year of the project, the proposal was rejected as inconsistent with the theme of the meeting. In the second year, Project staff were allotted 10 minutes during a two-hour program which was further cut back during the actual sessions because the meeting was running behind schedule.
4. Project staff developed the short and long form for its training programs. Even during those sessions scheduled for six hours it was difficult to ensure that all of the participants would remain throughout the session. The length of the training offered in future Project planning needs to strike a balance between meeting the needs of officials who have limited time and providing enough information to make the training worthwhile.

Unfortunately, the Project was unable to promote the number of training sessions and to provide the outreach materials, such as the ADR video materials that would have enabled this hypothesis to be adequately tested. Based upon the results of the questionnaire and oral interviews conducted by the Senior Researcher, it appears that the information and training are highly desira-

ble tools for increasing the utilization of ADR processes by regional leaders. Rather than reject the hypothesis that training will increase the utilization of ADR, the Project continues to conclude that this is an important tool and one that should be the primary focus of subsequent efforts in the region.

F. Implication of the City Hall Annexed Pilot Mediation Program for Breaking Down Barriers to the Use of Mediation by Government Officials

The first training session for the City Hall Annexed Pilot Mediation Project took place in the fall of 1997, almost four years after the initiation of the ADR Project. It generated the first press calls regarding Project activities since the Project had begun. There was extensive coverage and support for the proposed mediation program in each of the local newspapers with distribution in the participating cities. This in turn provoked calls from elected officials in neighboring towns asking to be included in the program as well. When the pilot was mentioned at several subsequent regional meetings, it sparked an interest in mediation services from the Project that were unseen even after the successful mediation of the environmental justice conformity issues in the RTP.

Interestingly, there were enthusiastic responses from staff to the Pilot Project as well, from within the cities where the services were offered as well as from staff in other cities that had heard about the efficacy of the program from their colleagues. This supports the conclusion that staff are a critical audience for promoting the use of ADR, especially in local governments where elected officials are part-time and rely heavily on staff for framing policy proposals and problem-solving.

Although the Project team has been unable to conduct a follow-up survey which specifically evaluates the implications of this response, it seems clear that there is significant interest in the region in finding out more about and potentially utilizing ADR services. This anecdotal evidence is confirmed by the findings of the senior researcher. Survey respondents indicated significant interest in using neutral mediators for the resolution of public policy disputes and were positive about the potential use of this process.

The response to the City Hall Annexed Pilot Mediation Project, both by ADR Advisory Committee members and the subsequent response following its implementation, suggests a different hypothesis than the one proposed for the Phase 2. Although it still might be argued that having successful, high

visibility public policy mediation cases does affect the support of regional leaders, it appears that promoting the use of mediation in settings that are more typical and familiar to local officials may yield better results with respect to breaking down the barriers to the use of ADR than had been originally assumed. This is supported by the survey results, with local leaders rating “providing more information, more training, and more opportunities to participate” as the three critical approaches for overcoming barriers to the use of qualified public policy mediators and facilitators. Projects such as the city hall pilot program introduced mediation into daily situations affecting city hall. This permitted local officials to participate in these efforts, even if the participation is limited to an evaluation and referral to volunteer mediators. The process of establishing such a program entails extensive training on the types of services provided as well as the mediation training program for service providers. In the city hall annexed pilot programs, the elected officials from each city attended the session along with staff and volunteers. As a result they became effective advocates within city government for the program and potentially for the use of mediation in disputes not directly associated with the pilot.

The Project team proposes an alternative hypothesis for any future similar initiatives undertaken by the Project: *The implementation of mediation programs at the local or subregional level to resolve disputes that commonly occur in municipalities coupled with training on the appropriate use of mediation and ADR services will increase the acceptance of mediation as a tool for conflict resolution within local government and for region-wide public policy disputes.*

G. Project Conclusions

1. The Public Policy ADR Program Consortium Project did not have a significant impact on the utilization of ADR services by cities and counties in the SCAG region.
2. By the end of Phase 2, there was an increased interest in the potential use of mediation and increased understanding of the potential benefits by regional officials as compared to the time that the Project was first initiated. However, this cannot be directly attributed to the Project.
3. Project materials and information on Project activities did not reach a broad audience of regional officials.
4. Officials that received materials or training were positively influenced to use mediation services in the future and recommended training coupled with direct experience to other officials.

5. A few high profile case studies have not noticeably increased the willingness of public officials to use ADR services.
6. Participation in community-based mediation programs sponsored by the Project increased the interest of public officials in utilizing mediation services based upon inquiries received for similar programs and services.
7. Disputants who participated in Project pilot cases indicated that most of the neutrals who provided services played a positive role in affecting the outcome of the dispute, even in those cases that did not settle.
8. Information and training on ADR services are the most effective tools for overcoming barriers to the use of dispute resolution services by elected officials.

H. Project Recommendations

The survey results reported by the senior researcher, as contrasted with the opinions expressed by regional leaders during the Project design phase, demonstrates there were positive changes in the understanding and attitudes of regional leaders that should be capitalized upon in the next phase of the Project.

- SCAG and its Consortium Partners should seek funding to expand the outreach and training capabilities of the ADR Project to provide either information, training or both to every SCAG jurisdiction. Subsequent efforts should focus on increasing the number and diversity of training opportunities provided, but also on providing training for staff at the local and regional staff levels.
- SCAG and its Consortium Partners should assist local jurisdictions in establishing city-based based mediation networks to provide mediation for neighborhood disputes. The Consortium should provide advanced training to volunteers who obtain experience in the city-based mediation programs to expand the number of mediators available to provide public policy mediation services within the region.
- The ADR Advisory Committee should expand its membership to include formal representation from the subregions. An ADR program should be established in the subregions under the aegis of the ADR Advisory Committee.
- The most successful programs undertaken by the Consortium were those in partnership with SCAG. The original concerns that an affiliation with SCAG would taint the services proved unfounded. The visibility of SCAG in the region and its role in coordinating regional planning makes it the appropriate venue for offering mediation services. Calls for service are more likely to find their way to SCAG than to an independent consortium that does not have a group track record. However, it is important for professional rosters to be composed of independent neutral professionals who are not employ-

ees of SCAG. SCAG members viewed the approach used by the ADR Advisory Committee—to screen and rank applicants for the roster as an acceptable approach for establishing the credibility of the roster. There is comfort in the fact that fellow elected officials have evaluated the qualifications of the neutrals. Decisions on which neutral to utilize are left as a joint decision of the disputants, rather than dictated by SCAG staff or the Regional Council.

- The Regional Council needs to reaffirm its commitment to the ADR Project by establishing specific program objectives pertaining to SCAG mandates and authorities, and setting a budget that is consistent with those objectives. The Regional Council also needs to examine opportunities for integrating ADR tools into its ongoing activities, and at early a stage as possible. The Regional Transportation Plan and the Regional Housing Needs Assessment Processes should be initiated using consensus-building principles from the onset by: a) identifying concerns in the subregions before any major technical documents have been generated; b) offering facilitation services to the subregions to be used as an integral aspect of generating subregional objectives and proposed projects; and c) rewarding senior staff for utilizing ADR tools in carrying out their responsibilities, rather than imposing ADR services at the crisis stage.

1. Lessons for Overcoming Barriers to the Use of ADR in Local Government Settings

Project staff frequently discussed their successes and failures and have asked “ what would we do differently in hindsight?” Certainly, the answer to this question lies in the recommendations provided at the formal conclusion of the SCAG project cited above. However, a number of additional lessons were gleaned based upon the experience of the Interstate 210 Corridor Project, which has continued beyond the time frame of the original Consortium effort, and are useful for other regions or government agencies that wish to increase the use of mediation and consensus-building for preventing and resolving disputes. Not surprisingly, some of the lessons replicate the experience gained in implementing the larger region-wide effort and therefore support the Project conclusions.

- Relying on minimal funding and volunteer time will get a program started, but it will lose its effectiveness and be relegated to second-class status unless one can consistently rely on a full level of service to meet participant needs.
- A focus on mediation only – that is resolving the dispute after other avenues have failed minimizes the role that ADR can play in local government settings. ADR is most effective when it is institutionalized as a way of thinking rather than an appendage not needed for normal everyday function, akin to the appendix in the human body. ADR-assessment, conciliation, convening, facilitation and mediation should be marketed and subsequently implemented as part of a tool kit that government officials – staff and electeds – consider part of the routine way of doing business.

- The consortium approach may be necessary at the onset of a program when resources and expertise are limited, but these intricate partnerships become confusing to user groups and become an impediment to institutionalizing programs. The key is to develop an in-housing understanding and capability. Outside neutrals can be called in for more difficult or complex problems that clearly require the objectivity and independence that cannot be provided from within.
- Maintaining an independent outside evaluator is critical to obtaining an objective evaluation of program objectivity. Working with the participants to help identify the objectives to be measured and the standard of measurement are the most valuable contribution. Secondly, the independent evaluator helps participants understand where they can improve their services without a filter of reasonable excuses for explaining why goals were not achieved. Last, an independent evaluator can provide important insights on trends and future pathways suggested by the data and obtained in personal interviews, that individuals involved in a program will not observe.
- The involvement of all the potential players in the design of a process is key to its acceptance and utilization. In the initial SCAG project, support for the ADR program came from the Executive Director and Legal Counsel. There was some interest among elected official leaders, but only at later points in the effort. Other senior staff at SCAG, and staff in the subregions, were not involved except when required to show up prepared for a mediation proceeding. In the 210 Corridor Project, the opposite occurred. The mayor, city managers and other city staff that manage the project and potentially receive program services for disputes involving their department, were included at every step. Staff participation in the volunteer training program and ongoing support, including case assessment and consultation on difficult problems, created the necessary support for the programs which made them successful in each of the cities.

APPENDIX ONE: SURVEY QUESTIONNAIRE

NAME (Optional)

Demographic Information (Circle One for Each Line)

A) Elected Official Senior Staff

B) Local Municipality/Agency SCAG Subregion COG

C) Size of Municipality:

Less than 100,000 100,001-500,000

500,001-1,000,000 More than 1,000,000

DEFINITIONS: for purposes of this questionnaire, the following terms will have the stated meaning:

Mediation: “The parties seek to resolve the dispute by mutual agreement with the help of a mediator, who acts as a neutral third-party facilitator of the negotiations.” Yaroslav Sochynsky, et al. *California ADR Practice Guide* § 1.04 (1995).

Facilitation: “A facilitator’s job is to help the group have a productive meeting. A facilitator is an impartial process guide who is responsible for managing the discussion so that parties can focus their attention on substantive issues and achieving their goals.” Susan Carpenter and W.J.D. Kennedy, *Managing Public Disputes*, 107 (1988).

Consensus-building: “The goal of consensus decision making is to reach a decision that all parties can accept. The parties reach agreement by gathering information, discussing and analyzing it, and convincing each other of its merits.” Carpenter, *supra*, 29.

Alternative dispute resolution (“ADR”): “There are numerous voluntary alternative dispute resolution methods available to facilitate the settlement of a dispute to adjudicate the dispute if settlement cannot be reached. These methods can be used separately or in combination, and their components can be modified and mixed to suit the circumstances of the particular case.” Jay E. Grenig, *Alternative Dispute Resolution* 19 (1997).

Arbitration: “The arbitrator resolves the dispute after a hearing by making an award. Once confirmed by the court, the arbitrator’s award has the force and effect of a judgment.” Sochynsky, *supra* § 1.03.

1. How has the Public Policy Dispute Resolution Consortium (PPDRC) dispute resolution project impacted your city?

- a) None or very little (Please answer questions 2-10)
- b) Some or very much (Please answer questions 11-20)

Note that those persons who picked answer b to question one should skip to question 11, and not answer questions two through ten.

2. Please mark the ways you have been exposed to the PPDRC’s public policy dispute resolution project (See enclosed sheet explaining PPDRC).

- Word of mouth.
- Official SCAG written announcements and communications.
- The Public Policy Consortium brochure.

Attended a SCAG meeting with a presentation about the program.
Attended a subregional COG meeting with a presentation about the program.
Served on an advisory committee.
Represented an agency involved in a dispute referred to the program.
Have not been exposed
Other.

3. Has your jurisdiction or agency had disputes with other governmental agencies, SCAG or constituencies that could have been aided by a neutral mediator/facilitator?

YES NO

Comments:

4. Has your jurisdiction or agency ever retained/appointed a neutral mediator/facilitator to assist in resolving an issue with:

Another local governmental agency	YES	NO
SCAG	YES	NO
A member of the public	YES	NO

5. Does your jurisdiction or agency currently have sources and resources to select qualified public policy mediators and facilitators?

YES NO

Comments:

6. Do you believe your jurisdiction or agency should involve qualified public policy mediators/facilitators for some of the disputes?

YES NO

Comments:

7. What is your perception of the attitudes of various staff and officials towards the PPDRC public policy dispute resolution program?

SCAG Downtown Staff:

Unaware Unsupportive Neutral Supportive

Regional COG Staff:

Unaware Unsupportive Neutral Supportive

Elected Officials of Your Agency:

Unaware Unsupportive Neutral Supportive

Senior Staff of Your Agency:

Unaware Unsupportive Neutral Supportive

Elected Officials Across the Region:

Unaware Unsupportive Neutral Supportive

Senior Staff of Local Agencies Across the Region:

Unaware Unsupportive Neutral Supportive

8. Whether or not the Consortium continues to operate, I would rate the following statements based on my experiences or observations: (Circle rating that reflects your views for each statement)

a) Localities will increasingly use mediation and facilitation to resolve public policy disputes and build consensus.

Strongly Agree Agree Neutral Disagree Strongly Disagree

b) Localities will never use mediation and facilitation to resolve public policy disputes and build consensus.

Strongly Agree Agree Neutral Disagree Strongly Disagree

c) We need mediation and facilitation available for smaller disputes within our locality, not just for large, regional conflicts.

Strongly Agree Agree Neutral Disagree Strongly Disagree

d) Mediation and facilitation can help improve decision making within our region.

Strongly Agree Agree Neutral Disagree Strongly Disagree

e) We have all the systems in place through SCAG to resolve policy disputes within the region, because this is one of SCAG's functions.

Strongly Agree Agree Neutral Disagree Strongly Disagree

9. What barriers do you think currently exist to utilizing qualified public policy mediators and facilitators, and how do you think those barriers might be overcome? (Check all that apply from both lists)

BARRIERS

- a) need more information presented to agency officials about public policy dispute resolution services.
- b) need more training of agency officials about public policy dispute resolution services.
- c) need more confidence by agency officials in public policy dispute resolution services.
- d) agency officials do not see the need to use public policy dispute resolution services
- e) agency officials can resolve disputes on their own without using public policy dispute resolution services.
- f) other barriers (please specify)

WAYS TO OVERCOME BARRIERS

- a) present more information to agency officials about public policy dispute resolution services.
- b) provide more training of agency officials about public policy dispute resolution services.
- c) build greater confidence by agency officials in public policy dispute resolution services.
- d) provide opportunities for agency officials to participate in resolving specific disputes in their jurisdictions

e) other ways (please specify)

10. How do you think the PPDRC can best assist local governments in utilizing qualified public policy mediators and facilitators?

PROGRAMS

(Rank in Order of Importance)

- Present training programs
- Promote roster of qualified public policy mediators
- Cultivate relationship with key referral sources
- Provide educational resources like videos/workbooks
- Provide technical support for local cities desiring to establish community based mediation programs
- Other

AUDIENCE

(Rank in Order of Importance)

- Focus on region wide gatherings of Elected Officials
- Focus on Subregion COG gatherings of Elected Officials
- Focus on Agency Senior Staff
- Focus on SCAG Downtown Staff
- Focus on Subregion COG Staff
- Other

Note that those persons who picked answer a to question one should stop at question ten and not answer questions eleven through twenty.

11. Please mark the ways you have been exposed to the Western Justice Center's public policy dispute resolution project.

- Word of mouth.
- Official SCAG written announcements and communications.
- The Public Policy Dispute Resolution Consortium brochure.
- Attended a SCAG meeting with a presentation about the program.
- Attended a subregional COG meeting with a presentation about the program.

Served on an advisory committee.

Represented an agency involved in a dispute referred to the program.

Have not been exposed

Other

12. Have you or your jurisdiction or agency received any services from the consortium ?

YES NO

If No, go on to question 14.

If Yes, please check any of the following services that were provided:

Attended a SCAG sponsored training program

Consulted with representative from your agency regarding using a mediator or facilitator

Determined possibilities of using a mediation/facilitation by interviewing a variety of parties affected by the dispute

Watched the video on Mediation, Why and When

Participated in a case study

Helped the affected parties in selecting a qualified public policy mediator

Provided a facilitator or mediator

Other

.

13. What was the quality of the services provided?

a) Very high

b) High

c) Acceptable

d) Poor

e) Very poor

Comment:

14. If you attended a training or presentation, did it increase your willingness to use a mediation or facilitation process for resolving a public policy dispute?

YES

NO

Comments:

***Questions 15-17 are for individuals who represent an agency with a dispute referred to the PPDRC public policy dispute resolution program. If your agency has not referred a dispute to the PPDRC dispute resolution program, please answer questions 18-20.**

15. Who suggested your agency refer a dispute to the PPDRC public policy dispute resolution program?

- a) SCAG Downtown Staff
- b) Subregional COG Staff
- c) An Elected Official from my agency
- d) A Elected Official from another agency
- e) A Senior Staff person from my agency
- f) A Senior Staff person from a neighboring agency
- g) Other:

16. What process was used, mediation, facilitation, or consensus building, and what was the outcome of the method chosen as well as your attitudes about the process? (Make one choice from each category)

Method:

- a) mediation
- b) facilitation
- c) consensus building
- d) other (specify)

Outcomes:

- a) An agreement was reached resolving all issues
- b) An agreement was reached on some issues that were resolved, but some issues were not resolved
- c) The process is completed and no issues were resolved
- d) The process is ongoing
- e) Other

Comments:

Attitudes about the process:

(From worst to best; pick one choice)

- a) It made the conflict worse
- b) It was a waste of time
- c) It didn't help or hurt
- d) It improved communication but it did not resolve the dispute
- e) It helped clarify the issues and explore creative solutions
- f) It resolved the dispute in a satisfactory manner.
- g) Other:

Comments:

17. Based upon your experience or observations, would you recommend that your jurisdiction or agency refer disputes to mediation or facilitation?

YES NO

Comment:

18. Please give us your advice regarding future arrangements for helping your jurisdiction or agency and others in the region resolve public policy disputes and build consensus on contentious issues. Which of the following options do you believe would best meet your needs?

The Public Policy Dispute Resolution Consortium should (check all that apply):

- a) Continue present activities in cooperation with SCAG.
- b) Continue present activities independently of SCAG.
- c) Increase the amount of:
 - (1) Orientation workshops on how and when to consider using mediation and the other methods of dispute resolution.
 - (2) Mediation Training workshops to provide hands-on skills to interested elected or appointed officials or other staff.
 - (3) Information dissemination through SCAG's newsletters.
 - (4) Information dissemination directly from the consortium.
 - (5) Other
- d) Terminate the program, because (select all that apply)
 - (1) If we need a mediator or facilitator, we will solicit such assistance directly and don't need the Consortium.
 - (2) I don't believe in using mediation and facilitation for public policy disputes.
 - (3) I don't think the program has been effective enough.
 - (4) SCAG should not be involved in providing mediators and facilitators to help resolve disputes within the SCAG region.
 - (5) Other

19. Whether or not the Consortium continues to operate, I would rate the following statements based on my experiences or observations:(Circle rating that reflects your views for each statement)

a) Localities will increasingly use mediation and facilitation to resolve public policy disputes and build consensus.

Strongly Agree Agree Neutral Disagree Strongly Disagree

b) Localities will never use mediation and facilitation to resolve public policy disputes and build consensus.

Strongly Agree Agree Neutral Disagree Strongly Disagree

c) We need mediation and facilitation available for smaller disputes within our locality, not just for large, regional conflicts.

Strongly Agree Agree Neutral Disagree Strongly Disagree

d) Mediation and facilitation can help improve decision making within our region.

Strongly Agree Agree Neutral Disagree Strongly Disagree

e) We have all the systems in place through SCAG to resolve policy disputes within the region, because this is one of SCAG's functions.

Strongly Agree Agree Neutral Disagree Strongly Disagree

20. What barriers do you think currently exist to utilizing qualified public policy mediators and facilitators, and how do you think those barriers might be overcome? (Check all that apply from both lists)

BARRIERS

a) need more information presented to agency officials about public policy dispute resolution services.

b) need more training of agency officials about public policy dispute resolution services.

c) need more confidence by agency officials in public policy dispute resolution services.

d) agency officials do not see the need to use public policy dispute resolution services

e) agency officials can resolve disputes on their own without using public policy dispute resolution services.

f) other barriers (please specify)

WAYS TO OVERCOME BARRIERS

a) present more information to agency officials about public policy dispute resolution services.

b) provide more training of agency officials about public policy dispute resolution services.

- c) build greater confidence by agency officials in public policy dispute resolution services.
- d) provide opportunities for agency officials to participate in resolving specific disputes in their jurisdictions
- e) other ways (please specify)

***Mail completed questionnaire using business reply envelope provided to:
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Pepperdine University School of Law
24255 Pacific Coast Highway
Malibu CA 90263**

APPENDIX TWO: CHART
Summary ADR Proposed Systems

Types of Disputes	System 1	System 2	System 3	System 4
	ADR for SCAG Mandates and Authorities	Policy & Regulatory Consensus Building	Interjurisdictional Disputes	Land Use/CEQA (SB 517 Bergeson)
Participants	SCAG Members and SCAG and local, regional, state and federal agencies	SCAG Members, SCAG, public groups, local regional, state, and federal agencies	Local, State Government Agencies and/or citizens	Any interest or entity
Issues (examples)	RTIP, RTP, OWP, Jobs/Housing, Growth Projections	TCMs, Base Closures Salton Sea, Goods Movement	Border Disputes City/County Revenue Sharing, Airport Expansion	CEQA Challenge, Project Siting Mitigation of Impacts
Convening Process	Member contacts SCAG Member contacts Subregion	SCAG identifies facilitator to convene interest	Local government or subregion convenes	Court or litigants initiate
Role of SCAG	Coordinate, Convenor Participant	Convenor Participant	Resource Referral	Resource
Role of Subregions	Participant Facilitator	Participant	Convenor, Resource	Referral Resource
ADR Process	Facilitation, mediation, arbitration.	Facilitation, mediation	Facilitation, mediation, arbitration.	Mediation

	factfinding		factfinding	
Service Providers	ADR Trained Elected or Official Subregional Staff Professional Mediators	Professional public policy mediators	ADR trained Elected Officials or Subregional staff, and Professional Mediators	Professional Mediators